

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. STEPHAN BIVIANO ZAPATA, Defendant.	3:24-CR-30057-ECS ORDER ADOPTING REPORT AND RECOMMENDATION AND DENYING AND DEFERRING IN PART MOTION TO DISMISS
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Defendant Stephan Biviano Zapata was indicted for violating 18 U.S.C. §§ 922(g)(3), 924(a)(8), and 924(d) for allegedly knowingly possessing a firearm while being an unlawful user of controlled substances. Doc. 1. Zapata moved to dismiss the Indictment, Doc. 27, contending that 922(g)(3) is unconstitutional, both facially and as applied to him, based on the Second and Fifth Amendments to the United States Constitution and precedent from the United States Supreme Court, including New York State Rifle & Pistol Ass’n v. Bruen, 142 S. Ct. 2111 (2022). Magistrate Judge Mark A. Moreno issued a Report and Recommendation Denying and Deferring in Part Defendant’s Motion to Dismiss. Doc. 31. Judge Moreno recommended denying Zapata’s motion to the extent it seeks to have § 922(g)(3) declared facially unconstitutional under the Second and Fifth Amendments as well as the Separation-of-Powers Doctrine. Doc. 31 at 10. Judge Moreno further recommended deferring ruling on Zapata’s as-applied challenges as the issues arising from these challenges are not ripe for a final decision until a full factual record is developed at trial. Id. Zapata filed timely objections to the Report and Recommendation. Doc. 32.

When a party objects to a magistrate judge's report and recommendation, a district court judge must "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). The district court "judge ... may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.* This Court has reviewed the Report and Recommendation de novo and agrees with its findings and recommendations. This Court believes United States v. Veasley, 98 F.4th 906 (8th Cir. 2024) forecloses Zapata's arguments. Therefore, it is hereby

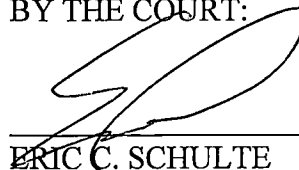
ORDERED that Defendant's Objections to the Report and Recommendation, Doc. 32, are overruled, and the January 15, 2025, Report and Recommendation, Doc. 31, is adopted. It is further

ORDERED that the Defendant's Motion to Dismiss Indictment, Doc. 27, is denied with prejudice as to its facial constitutional challenges and separation-of-powers challenge. It is further

ORDERED that Defendant's Motion to Dismiss Indictment, Doc. 27, is denied without prejudice as to its as-applied challenges.

DATED this 22nd day of January, 2025.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Eric C. Schulte', is written over a horizontal line.

ERIC C. SCHULTE
UNITED STATES DISTRICT JUDGE